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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,108	02/15/2002	Olaf Zaencker	071308.1065	8552
31625 7590 12/08/2008 BAKER BOTTS L.L.P. PATENT DEPARTMENT 98 SAN JACINTO BLVD., SUITE 1500 AUSTIN, TX 78701-4039				
EXAMINER				
DUONG, DUC T				
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2419				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/076,108

**Applicant(s)**

ZAENCKER, OLAF

**Examiner**

Duc T. Duong

**Art Unit**

2419

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 2, and 5-23 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 2, and 5-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 14-16 recite the limitation "the enumeration" in lines 7-8. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "the connection" in line 17. There is insufficient antecedent basis for this limitation in the claim.

Claims 2, 5-13, and 17-23 are also rejected since they depend on claims 1 and 14-16.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 5, 8-16, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sand (US Patent 6,521,746 B1) in view of Grabelsky et al et al (US Patent 6,678,250 B1).

Regarding to claims 1 and 16, Sand discloses a system comprising a detecting unit 32, arranged at a detection point on a transmission channel between a first (left-end) and a second 38 (right-end) VoIP endpoints to collect a number of RTP speech packets transmitted between the two VoIP endpoint (fig. 3 col. 5 lines 55-62) and an arithmetic processing unit 54 INMD connected on the input side to the detecting unit to calculate a value representing the transmission quality (i.e. speech level, noise, echo, path delay) from the number of RTP speech packets collected (fig. 4 col. 6 lines 23-28).

Sand fails to teach for detecting an enumeration of RTP speech packets transmitted from the first VoIP endpoint as a first number and an enumeration of RTP speech packets transmitted from the second VoIP endpoint as a second number.

However, Grabelsky discloses a system and method for monitoring the performance of real-time networks by determining a number of packet count transmitted from a first VoIP endpoint 20 and a number of packet count transmitted from a second VoIP endpoint 23 (fig. 1 col. 7 lines 50-55).

Thus, it would have been obvious to a person of ordinary skill in the art, at the time invention, to employ such packet detection as taught by Grabelsky into Sand's system to determine the fractional packet loss during the transmission of a session.

Regarding to claims 2 and 13, Sand discloses the predetermined time period of detection for a 10 Mbit/s transmission channel is longer than 5s or in the range of about 10s to 30s (fig. 7 col. 7 line 66-67 and col. 8 lines 1-6).

Regarding to claims 5 and 18, Sand discloses the value representing the transmission quality is subjected to a threshold value discrimination in order to suppress side effects due to features of the communication protocol (col. 6 lines 29-31 ).

Regarding to claims 8 and 19, Sand discloses the detected first and second numbers and/or the calculated values for a plurality of first and second VoIP endpoints connected to the IP network between which bidirectional speech connections exist in each case are logged (col. 5 lines 63-65).

Regarding to claims 9 and 20, Sand discloses the detected first and second numbers for the first and second VoIP endpoints connected to the IP network within which bidirectional speech connections exist in each case are subjected to summarizing statistical processing to obtain an overall value representing the overall transmission quality of the IP network or of a section of the overall transmission quality of the IP Network (fig. 5 col. 7 lines 56-65).

Regarding to claims 10 and 21, Sand discloses the value representing the transmission quality is signaled to subscribers at the first and/or second VoIP endpoints and/or to an operation control center of the IP network (col. 6 lines 32-33).

Regarding to claims 11 and 12, Sand discloses the value representing the transmission quality is determined in real-time (col. 5 lines 55-62) and is used as an

input variable for controlling the speech transmission over the IP network (col. 6 lines 23-28).

Regarding to claims 14 and 15, Sand discloses a method comprising detecting 32 at a detection point on a transmission channel between a first 38 (left-end) and a second 38 (right-end) VoIP endpoints a first number of RTP speech packets transmitted in a direction of the second VoIP endpoint (fig. 3 col. 5 lines 55-62), and a second number of the RTP speech packets transmitted in a direction of the first VOIP endpoint (fig. 3 col. 6 lines 21-22); and arithmetically process 54 INMD a value representing the transmission quality (i.e. speech level, noise, echo, path delay) from the first and second numbers (fig. 4 col. 6 lines 23-28); and wherein the value is used for routing a connection between the first and second VoIP endpoints and setting transmission parameters (fig. 3 col. 8 lines 12-18).

Sand fails to teach for detecting an enumeration of RTP speech packets transmitted from the first VoIP endpoint as a first number and an enumeration of RTP speech packets transmitted from the second VoIP endpoint as a second number.

However, Grabelsky discloses a system and method for monitoring the performance of real-time networks by determining a number of packet count transmitted from a first VoIP endpoint 20 and a number of packet count transmitted from a second VoIP endpoint 23 (fig. 1 col. 7 lines 50-55).

Thus, it would have been obvious to a person of ordinary skill in the art, at the time invention, to employ such packet detection as taught by Grabelsky into Sand's system to determine the fractional packet loss during the transmission of a session.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sand in and Grabelsky in view of Gross et al (US Patent 6,553,515 B1).

Regarding to claim 17, Sand discloses all the limitations with respect to claim 16, except for the arithmetic processing unit have a division or subtraction stage. However, Gross discloses a method and a system for measuring network performance that include a packet division arithmetic processing (col. 19 lines 31-40). Thus, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to include a division stage as taught by Gross into Sand and Grabelsky's system since such arithmetic function is well-known in the art to use for network performance calculations.

#### ***Allowable Subject Matter***

7. Claims 6, 7, 22, and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is (571)272-3122. The examiner can normally be reached on M-F (8:00 AM-5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2419

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. T. D./  
Examiner, Art Unit 2619

/Wing F. Chan/  
Supervisory Patent Examiner, Art Unit 2419  
12/04/08